

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

CESAR PEREZ,

Plaintiff,

V.

**GEOVERA SPECIALTY INSURANCE
COMPANY,**

Defendant.

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CIVIL ACTION NO. _____

JURY DEMAND

DEFENDANT'S NOTICE OF REMOVAL

Defendant GeoVera Specialty Insurance Company files this Notice of Removal:

I.

FACTUAL AND PROCEDURAL BACKGROUND

1. On May 31, 2016, Plaintiff Cesar Perez filed this lawsuit in Cameron County, Texas, naming GeoVera Specialty Insurance Company ("GeoVera") as defendant.

2. Plaintiff served GeoVera with a copy of the Petition on or about June 24, 2016.

3. GeoVera files this notice of removal within 30 days of receiving Plaintiff's initial pleading. *See* 28 U.S.C. § 1446(b). In addition, this Notice of Removal is being filed within one year of the commencement of this action. *See id.*

4. As required by Local Rule 81 and 28 U.S.C. § 1446(a), simultaneously with the filing of this notice of removal, attached hereto as Exhibit "A" is an Index of Matters Being Filed. A copy of the Case Summary/Docket Sheet is attached as Exhibit "B." A certified copy of Plaintiff's Original Petition is attached as Exhibit "C," and a certified copy of the Civil Case Information Sheet is attached as Exhibit "D." A certified copy of Citation issued to GeoVera Specialty Insurance Company is attached as Exhibit "E," and Defendant GeoVera Specialty

Insurance Company's Original Answer is attached as Exhibit "F." The List of Counsel and Parties to the Case is attached as Exhibit "G." A copy of this Notice is also being filed with the state court and served upon the Plaintiff.

5. Venue is proper in this Court under 28 U.S.C. § 1441(a) because this district and division embrace Cameron County, Texas, the place where the removed action has been pending.

II. **BASIS FOR REMOVAL**

6. Removal is proper based on diversity of citizenship under 28 U.S.C. §§ 1332(a), 1441(a) and 1446.

A. The Parties Are Of Diverse Citizenship.

7. Plaintiff is, and was at the time the lawsuit was filed, a resident and citizen of Texas.

8. GeoVera Specialty Insurance Company is, and was at the time the lawsuit was filed a citizen of California. GeoVera Specialty Insurance Company is an insurance company incorporated under the laws of the State of California, with its principal place of business in Fairfield, California.

9. Because Plaintiff is a citizen of Texas and Defendant GeoVera is a citizen of California, complete diversity of citizenship exists among the parties.

B. The Amount in Controversy Exceeds \$75,000.00.

10. Plaintiff alleges that Defendant is liable under a residential insurance policy because Plaintiff made a claim under that policy and Defendant wrongfully adjusted and denied Plaintiff's claim. Specifically, but without limitation, Plaintiff alleges that Defendant GeoVera breached the insurance policy number GC90004152, with a Dwelling Limit of \$104,000.00, an Other Structures Limit of \$10,400.00, a Personal Property Limit of \$52,000.00, and a Loss of

Use Limit of \$20,800.00, for the property located at 2396 Munich St., Brownsville, TX 78520 3785 (the property giving rise to the present dispute). *See* Exhibit “H,” Nelson Declaration, attached hereto and fully incorporated herein by reference.

11. Additionally, in determining the amount in controversy, the Court may consider policy limits, penalties, statutory damages, and punitive damages. *St. Paul Reinsurance Co. Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see Ray v. State Farm Lloyds*, 1999 WL 151667, at *2-3 (N.D. Tex. 1999) (finding sufficient amount in controversy in plaintiff’s case against the insurer for breach of contract, bad faith, violations of the Texas Insurance Code and Texas Deceptive Trade Practices Act and mental anguish); *Fairmont Travel, Inc. v. George S. May Int’l Co.*, 75 F.Supp.2d 666, 668 (S.D. Tex 1999) (considering DTPA claims and the potential recovery of punitive damages as part of the amount in controversy). “Attorney’s fees must be included in the calculation of the amount in controversy if the plaintiff would be able to recover them under a state statute” *Gilman v. Arthur J. Gallagher & Co.*, No. H-09-2366, 2009 WL 5195956 at *10 (S.D. Tex. Dec. 21, 2009); *Consumer Credit Counseling Serv. of Greater San Antonio v. OneBeacon Lloyd’s of Texas*, No. SA-06-CA-307, 2006 WL 2728906 at *3 (W.D. Tex. Aug. 23, 2006) (considering attorney’s fees in its analysis of the amount in controversy); *Missouri State Life Ins. Co. v. Jones*, 290 U.S. 199, 200-02 (1933) (finding attorney’s fees should be considered as part of the amount in controversy for purposes of federal diversity). Pre-suit demand letters are also evidence of the jurisdictional amount in controversy. *Molina v. Wal-Mart Stores Texas, L.P.*, 535 F.Supp.2d 805, 808 (W.D. Tex. 2008).

12. Here, Plaintiff’s Original Petition alleges that Defendant is liable under various statutory and common law causes of action for actual damages, consequential damages, statutory

penalties and interest, treble damages, exemplary damages, court costs, and attorney's fees. As such, Plaintiff's alleged damages greatly exceed \$75,000.00.

Conclusion and Prayer

Accordingly, all requirements are met for removal under 28 U.S.C. §§ 1332 and 1441. Accordingly, GeoVera hereby removes this case to this Court for trial and determination.

Respectfully submitted,

/s/ Rhonda J. Thompson

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**COUNSEL FOR DEFENDANT GEOVERA
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CERTIFICATE OF SERVICE

The undersigned certifies that on the 25th day of July, 2016, the foregoing pleading was served on the following counsel of record in accordance with the Federal Rules of Civil Procedure:

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/s/ Adrienne H. Nelson

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